Therefore, the Writ in this case has been improperly issued and must be set aside. The service of the Writ must equally be set aside.

Section 115 of the Civil Procedure Code provides—

> 115.—(1) In an action relating to any business or work against a person who does not reside within the Colony, or who is absent from the Colony, service of a writ of summons for service within the jurisdiction on any manager or agent, having at the time of service personally the control or management of such business or work for such person within the Colony, shall be deemed good service whether such person is a British subject or not.

In my opinion at the time of the service Messrs. Huttenbach Lazarus & Sons Limited had not personally the control or management of the Defendants' business. Further, I consider that they were quite justified in notifying the Defendants' clients that their authority had been terminated, as, if they had continued their agency with the knowledge that an act of bankruptcy had been committed by their principals, they might have found themselves in grave legal difficulties, in the event of an actual bankruptcy ensuing.

I am unable to see that the submission of the statement of the position referred to in Plaintiff's attorney's affidavit of the 17th June, in any way proves that on the 10th June 1932, when the writ was served, Messrs. Huttenbach Lazarus & Sons, Limited had the control or management of the Defendants' business within the Colony.

Costs to be Defendants.

Order accordingly.

Solicitors for the Plaintiff—

Presgrave & Matthews.

Solicitors for the Defendants—

Adams & Allan.

[APPELLATE CRIMINAL JURISDICTION]

REX

vs.

TAN THIAN CHAI & GNOH CHEE BAH.

[S'PORE MAGISTRATE'S APPEAL No. 25 OF 1932]

Procedure— Accused's plea through Counsel —whether valid.

An accused person should plead guilty or claim to be tried by his own mouth and not through his counsel or advocate.

Queen v. *Roopa Gowalla* 15 W.R. 42 followed.

In this case the accused were charged with voluntarily causing grevious hurt under Section 325 of the Penal Code.

On the 17th day of May when the case came up before Mr. G. C. Dodd the then Criminal District Judge the first accused pleaded "guilty" but the 2nd accused pleaded "not guilty" to the charge. The learned District Judge, not being satisfied that the first accused understood the charge, had it read over and explained to him a second time whereupon he also pleaded not guilty to the same.

On the 13th of July 1932 the case came up for trial before Mr. C. Wilson, the present Criminal District Judge.

The charge was read to the accused and before they could plead to it through their own mouths their counsel pleaded guilty on their behalf to a charge of assault whereupon the District Judge convicted and sentenced them to 6 months' rigorous imprisonment each without option of a fine.

The accused appealed to the Supreme Court on the ground that they never pleaded to the charge and that their counsel did not have any authority from them to plead guilty. They were not bound by their counsel's plea.

S. C. Goho, on behalf of the appellants, submitted that the accused must plead guilty or claim to be tried by his own mouth and not through his counsel or advocate.

W. B. O'Connor, on behalf of the respondent, agreed with the above view.

WHITLEY, J. agreed with the submission of counsel for the appellants and set aside the conviction and sentence and ordered the case to be tried *de novo* before another District Judge.

[ORIGINAL CRIMINAL JURISDICTION]

REX

vs.

C. SANMUGAM AND ANOR.

[SINGAPORE ASSIZE CASE No. 8 OF 1932.]

Practice—Whether Prosecuting Officer in a trial before a Jury in the Supreme Court is bound to call witnesses who gave evidence in the Preliminary Inquiry.

In this case the prisoners, C. Sanmugam and M. Sithampalam were charged at the Assizes before Mr. Justice N. H. P. Whitley and a special Jury on the 25th July 1932 with Forgery, using as genuine a forged document, and abetment of forgery.

During the course of the prosecution Mr. Pedlow the Ag. Solicitor-General who conducted the Prosecution stated that he did not intend to call Leong Ah Kow, a witness who gave evidence for the Crown before the Committing Magistrate. Mr. V. D. Knowles for the 2nd accused contended that the practice should be that the witness should be called either by the Prosecution or by the Judge so that the accused or his Counsel should have the opportunity of cross-examining him. He referred to the cases of *Rex* v. *Thomas Simmonds* 1. Car & P. 84. 171 Eng. Reps. 1111; *Rex* v. *Bodle* 6. Car & P. 186. 172 Eng. Reps. 1200; *Reg* v. *John Bull* 9. Car & P. 22. 173 Eng. Reps. 723; and *Reg* v. *Holden* 8. Car & P. 606. 173 Eng. Reps. 638. This latter case was followed in 1915 in *Amrita Lal Hazra* v. *Emperor* I.L.R. 42 Cal. at p. 1004.

He referred to the earlier case of *Reg* v. *Teo Ah Hoo* IV Kyshe 317, in which on a case reserved in 1887 the practice was then stated to be that "the usual practice should be that all Witnesses called before the Magistrate on behalf of the prosecution, should be called for the prosecution on the trial at the Supreme Court. At the same time there might be cases in which the prosecuting Counsel might, in his discretion think it was conducive to the interests of justice not to call a particular witness, and in these cases the Court would not interfere with his discretion, but the witness should be produced in Court so that the Counsel for the defence might call him if he thought proper as his witness. The witness, if called by the Counsel for the defence, would be subject to cross-examination by the Counsel for the prosecution in the same way as any other witness for the defence."

Pedlow, Ag. Solicitor-General for the Crown *contra* argued that, although all the witnesses called for the prosecution before the committing Magistrate should as a general rule be called for the Crown at the Assizes, Crown counsel had a discretion in the matter and submitted that it was not competent for the Court to interfere with his discretion. All that he was required to do was to have the witnesses in attendance in Court and the Defence was at liberty to call them as their witnesses in which case the Crown would be entitled to cross-examine them.

He referred to *Reg* v. *Cassidy*, 1 F. & F. 79. 175 Eng. Reps. 634, *Reg* v. *Teo Ah Hoo* (supra) *R.* v. *Woodhead*, 2 C. & R. *R.* v. *Edwards*, 3 Cox C. C. 82, and to Archbold on Criminal Pleading and Practice, page 505, and Roscoe's Criminal Evidence.

WHITLEY, J. In a trial by the Jury the prosecuting officer is not bound to call as a witness for the Crown or tender for cross-examination a witness who gave evidence in the preliminary inquiry whose evidence in his opinion is unnecessary, hostile, or not believed. But such witness must be in attendance. If the accused or his Counsel wishes to have such witness called when not called by the Crown, then the witness becomes his witness and the prosecuting officer will have the right of cross-examination.

Pedlow, Ag. Solicitor-General for the Crown.
Knowles, for the 2nd accused.